

BEFORE THE HUMAN RIGHTS COMMISSION
OF THE STATE OF MONTANA

KAREN NOSEK,
Charging Party

HRB CASE NO. 0121015671

-v-

FINAL AGENCY DECISION

COMMUNITY ACTION PARTNERSHIP,
Respondent

Charging Party, Karen Nosek (Nosek), filed a complaint with the Department of Labor and Industry (Department) alleging discrimination in the terms and conditions of employment on the basis of perceived disability. Following an informal investigation, the Department determined that a preponderance of the evidence did not support Nosek's allegations that Respondent, Community Action Partnership, discriminated against Nosek. The Department issued a Notice of Dismissal. Nosek filed an objection with the Montana Human Rights Commission (Commission). The Commission considered the matter on June 14, 2013. Elizabeth O'Halloran appeared and argued on behalf of Nosek. Dan Johns appeared and argued on behalf of Community Action Partnership.

The Commission reviews a decision of the Department to dismiss a complaint using an abuse of discretion standard. *Section 49-2-511(2), MCA*. In this case, the Commission finds the preponderance of the evidence strongly indicates that the employer did not perceive Nosek as disabled in any manner, but instead referred her to mandatory counseling for the purpose of enhancing Nosek's communication skills to improve Nosek's supervisory performance. After careful consideration, the Commission concludes the determination of the Department to dismiss the complaint in this case is not an abuse of discretion.

If a charging party chooses to commence a civil action in district court, the charging party has 90 days after the date this order is issued to file a complaint in district court, in the district

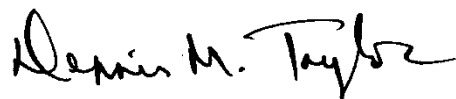
where the alleged violation occurred, and seek appropriate relief. *Section 49-2-511(3)(a), MCA.*

If a charging party fails to commence a civil action within 90 days, their claims are time barred. *Id.*

Alternatively, a party may ask a district court to review the decision of the Commission to affirm the dismissal of a complaint. *Sections 2-4-702 and 49-2-511(3)(b), MCA.* This review must be requested within 30 days of the date of this order. A party must promptly serve copies of a petition for judicial review upon the Human Rights Commission and all parties of record. *Section 2-4-702(2), MCA.*

IT IS HEREBY ORDERED, that Karen Nosek's objection is **overruled**. The Commission affirms the determination of the Human Rights Bureau to dismiss the complaint against Community Action Partnership.

DATED this 14th day of June, 2013.

A handwritten signature in black ink, reading "Dennis M. Taylor". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

Dennis M. Taylor, Chair
Human Rights Commission

CERTIFICATE OF SERVICE

The undersigned secretary for the Human Rights Commission certifies that a true and correct copy of the foregoing ORDER was mailed to the following by U.S. Mail, postage prepaid, on this 17th day of June, 2013.

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A handwritten signature in black ink, reading "Annah Smith". The signature is written in a cursive style with a horizontal line underneath the name.

Annah Smith, Legal Secretary
Montana Human Rights Bureau